

UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF THE DEPUTY ATTORNEY GENERAL

WASHINGTON, D. C.

MAY 17 1962

Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D. C.

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice concerning the bill (S. 2361), "To amend sections 303 and 310 of the Communications Act of 1934 to provide that the Federal Communications Commission may, if it finds that the national security would not be endangered, issue licenses for the operation of an amateur station to certain aliens for any temporary period, not in excess of three years."

Under existing law the Federal Communications Commission is authorized to issue radio station operators licenses to qualified citizens of the United States. However, with respect to the operation of radio stations on aircraft the Commission also is authorized, if it finds that the public interest will be served thereby, to waive the requirement of citizenship in the case of persons holding United States pilot certificates or persons holding foreign aircraft pilot certificates valid in the United States on the basis of reciprocal agreements entered into with foreign governments (47 U.S.C. 303(e)). Aliens or representatives of aliens of the class described above also may be granted and may hold licenses for radio stations on aircraft although aliens or representatives of aliens generally may not be granted or hold such licenses (47 U.S.C. 310).

The bill would amend existing law (sections 303 and 310 of the Communications Act of 1934) by enlarging the category of aliens who may be issued licenses. It would

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authorize the Federal Communications Commission to issue amateur operators licenses and to issue licenses for amateur stations to aliens on a basis of reciprocity if the Commission finds that the national security would not be endangered.

As the Committee is aware, dangers to the national security are inherent in the field of communications. In Borrow v. F.C.C., 285 F. 2d 666, a case involving the refusal of the Commission to renew appellant's radio operator's license because of his failure to reply to a questionnaire concerning membership in the Communist Party or subversive organizations, the Court stated:

"Radio beams are the operational essence of quick modern communication and of the control of modern weapons. Not only the power to use these electronic devices but the power to interfere with waves being used by others should, it might properly seem to the Commission, be lodged in those whose loyalty to the United States is made to appear. Surely no such power should knowingly be accorded to those who belong to organizations advocating or teaching the overthrow of this government by force or violence. At the very least, the Commission is entitled to know whether those who it licenses to control these devices belong to such an organization. Any program less than that simple necessity would be not only short-sighted but dangerous to the national security."

In August of 1960 the Vice-President of the Mutual Broadcasting System stated before the House Un-American Activities Committee that even a few Communist agents or sympathizers could play havoc with the Conelrad Emergency Radio System. An Air Force representative said at the same hearing that a subversive agent could cause panic among the public if he gave false instructions over Conelrad stations.

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Also, the Vice-President of the American Cable and Radio Corporation and its subsidiaries testified in 1957 that subversive technicians if placed in strategic spots, could copy government codes and disrupt international communications.

Radio communication is an important tool to successful espionage operations in time of peace. In an emergency it is of even greater importance to espionage, sabotage and other subversive operations, when diplomatic channels are not available.

The security considerations mentioned above are based largely on positions which have been asserted by the Federal Communications Commission and by experts in the communications field and it would seem that they would be in the best position to comment on what extent, if any, the provisions of this bill would add to such security problems.

Aside from security considerations, which might remain substantially the same regardless of whether the bill is enacted, the subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. There are however certain features of the bill to which attention is invited.

The amendment to section 303 would give the Commission power to revoke summarily any amateur operator's license granted to an alien. However the amendment to section 310 regarding licenses for amateur radio stations issued to aliens contains no similar provision. It is recommended, therefore, that the amendment to section 310 specifically provide for summarily closing any station licensed to an alien, in line with the provision for summarily revoking an alien operator's license.

Although the bill does provide for summary revocation of an amateur operator's license issued to an alien, it does not, in our opinion, make it sufficiently clear that

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an alien applicant for a license should not be entitled to a hearing. Since the issuance of licenses to aliens under the provisions of this bill might involve confidential considerations relating to national security, it is suggested that you consider the addition of express language to the effect that alien applicants, notwithstanding any other provisions of the Communications Act or of the Administrative Procedure Act, would in no circumstances be entitled to any hearing rights.

On page 2, lines 5 and 25 appears the phrase "to which an alien owes permanent allegiance". That description is vague and might lead to doubt by the Commission in passing upon applications for licenses for amateur radio stations. It is suggested that this might be eliminated by substituting the language "of which the alien is a national, citizen or subject."

Also it is noted that the bill would extend the privilege of obtaining such a license to any "alien". While that result may have been intended the term would include nonimmigrants such as aliens who are in the United States temporarily, passing in transit, or are here only for other short periods of time. It might even include aliens who came to the United States illegally.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

Nicholas deB. Katzenbach
Deputy Attorney General